No. 93-958

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1993

JESSIE EDWARD WILLIAMS

Petitioner

v.

STATE OF ALABAMA, CAPPS TRAILER SALES

ET. Al.

Respondents

PETITION FOR WRIT FOR CERTIORARI FROM

U.S. COURT OF APPEALS, 11TH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

ORAL ARGUMENT REQUESTED

JULIA ASAM

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205 333-1999

39 pp

QUESTIONS PRESENTED

I. Whether a state procedural law [Code of Alabama, § 6-2-3, 1975, concerning the tolling of the statute of limitations when newly discovered fraud) interpretation and misinterpretation by the highest court in the state and by the U.S. Court of Appeals, 11th Circuit, ignoring the true facts in the instant case that two affidavits were presented in the lower court that concrete blocks had to be removed off Mr. Williams before he could be lifted from the wrecked truck cab and the concrete blocks were the proximate cause of the accident due to Mr. Huey Capps and Mr. Alston Keith [silent partner in Capps Trailer Sales] demanding Mr. Williams to overload his truck with concrete blocks when Mr. williams was having to haul a trailer and when the milk tanker hit Mr. Williams on the highway and Mr. Williams was also driving a defective vehicle which Mr. Capps had not fixed and had no permit with no brake away switch [none of the above was known in 1974 or mentioned in any record before filing the

QUESTIONS PRESENTED (CONTINUED)

instant case], there was truly discovered new evidence showing fraud as described in the lower circuit court and the federal courts and the state and federal courts cause the constitutional violation of Mr. Williams due process in the courts because the courts failed to have a jury trial to determine the true facts but instead ruled for the special interest groups of lawyers representing the insurance companies who failed to give Mr. Williams what he was due as a paraplegic ; the point is the courts claimed re-evaluation instead of reading the entire record [see pp. a-8 and a-9 in brackets] when in reality there was newly discovered fraud evidence as presented in state and federal courts which clearly would have triggered the tolling fraud statute for newly discovered fraud [Code of Alabama, §6-2-3] which the courts have ignored in both state and federal courts causing Mr. Williams to have no due process in any court, ie. the question is

QUESTIONS PRESENTED (CONTINUED)

whether Mr. Williams' constitutional right to have due process under the 5th and 14th amendments to the U.S. Constitution have been violated by procedural laws of state and federal courts below; therefore, Mr. Williams civil rights [42 U.S.C. §1983] as a disabled paraplegic has been violated by the courts ignoring the newly discovered fraud evidence which was presented in two affidavits in the lower state court?

II. Whether the instant case is a frivolous lawsuit when the newly discovered fraud had cause Mr. Williams to be a paraplegic when the attorneys against Mr. Williams represent special insurance groups that had no interest in paying what Mr. Williams was due, attacked the attorney for Mr. Williams to attempt to obtain sanctions and after the U.S. Court of Appeals, 11th Circuit had denied sanctions,the persistent lawyers are still trying to get sanctions on Dr. Asam especially after she ran for judge as the first woman to run for circuit judge in Tuscaloosa County and as late

QUESTIONS PRESENTED (CONTINUED)

as November 29, 1993, when Dr. Asam drove to Atlanta to see the file in this case before writing a Supreme Court Brief, the file was missing in the instant case.

III. Whether there is a Eleventh Amendment exception through the American with Disabilities Act since the ruling in the instant case in the U.S. Court of Appeals, 11th Circuit, was on Augsut 18, 1993, with the rehearing denied on September 22, 1993, which precludes Eleventh Amendment immunity for states in federal court, 42 U.S.C.§12202, since Mr. Williams has a continuous disabled condition as a paraplegic who has not had his day in court due to political rulings ignoring the facts in this instant case and ruling for the special interest insurance groups who hired a number of lawyers, who are trying to win by creating a "smoke screen" about a frivolous lawsuit when Mr. Williams is a permanent paraplegic; a jury should have determined whether facts were newly discovered fraud.

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PARTIES TO THE PROCEEDINGS

The petitioner is Jessie Edward Williams who was Plaintiff and Appellant below.

The Respondents are State of Alabama, Mr. Huey Capps, Capps, Trailer Sales, and Reliance Insurance Co., Montgomery, Alabama, who were Defendants and Appellees below.

ORAL ARGUMENT REQUESTED

The Petitioner respectively requests that oral argument be allowed because of the complexity of the facts and the law in the instant case, and so that the Honorable Justices can ask questions.

No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1993

JESSIE EDWARD WILLIAMS,

Petitioner

v.

STATE OF ALABAMA, CAPPS TRAILER SALES ET AL.

Respondents

PETITION FOR WRIT FOR CERTIORARI FROM

U.S. COURT OF APPEALS, 11TH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

OPINIONS BELOW

The Petitioner incorporates all statements which are stated in the Appendix as Opinions Below onto this Writ of Certiorari.

JURISDICTION

Reversal and review is sought from the final decision of the U.S. Court of Appeals, Eleventh Circuit, affirmed with opinion as stated, starting on p. a-6, Jurisdiction invoked under 28 U.S.C. 1254 as Writ.

CONSTITUTIONAL PROVISIONS INVOLVED

Amendment XIV of Constitution of the United States provides, in part, as follows:

"... no state shall make or enforce any law which shall ... deprive any person of ... property without due process of law..."

Amendment XIV of the Constitution of the United States further provides, in part, as follows:

"... no state shall make or enforce any law which shall ... deprive any person of ... property without **due process** of law: nor deny to any person within its jurisdiction the equal protection of the laws."

Also, jurisdiction of this Court is invoked under U.S. Constitution, Amendment V, "no person shall... be deprived of life, liberty or property, without due process of law;"

STATEMENT OF THE CASE

This instant case is about the violation due process rights of the Petitioner to have his day in court when the courts below have failed to consider the true facts in the instant case that newly discovered fraud was clearly shown when two affidavits below clearly stated that they had to remove concrete blocks out of the truck cab in a severe accident in order to lift Mr. Williams out of the truck cab who had been made a paraplegic due to his boss from Capps Trailer Sales, Mr. Capps

demanding that Mr. Williams drive with an overload of concrete blocks while hauling a trailer, with no break away switch or permit and when Mr. Williams trailer that he was hauling was hit by a milk tanker Mr. Williams vehicle and trailer left the road and Mr. Williams became a paraplegic as stated in the facts below.

The Complaint was filed in the federal court on January 14, 1992. The Petitioner challenged the Alabama law in Code of Alabama, §6-2-3, the fraud tolling statute, since in the instant case all courts below ignored the true facts concerning newly discovered fraud, and **not** re-evaluation that the courts wished to claim to rule in favor of the special interest insurance companies.

STATEMENT OF THE FACTS

The Petitioner stated that the Alabama Supreme Court did erroneously reject the fraud tolling statute, Alabama code § 6-2-3 and violated the due process rights of Mr. Williams under the 5th and 14th amendments to the U.S. constitution.

Mr. Williams as a paraplegic should come under the protection of the Americans with Disabilities Act of 1990, and in particular in this instant case the U.S. Court of Appeals, 11th Circuit, final order was August 18, 1993, the American for Disabilities Act should protect Mr. Williams from the State of Alabama claiming immunity when the State of Alabama was sued to challenge the interpretation of the Alabama code, § 6-2-3 as to tolling the time of the fraud statute, when the true facts in the instant case showed that there was newly discovered fraud [see 2 affidavits below] and the "re-evaluation theory of the courts below is incorrect.

The point is case below should have not been dismissed when there is a disputed fact whether there was fraud in Mr. Capps requiring Mr. Williams to haul an unsafe load of concrete blocks on a trailer home without a permit when the said concrete blocks were the proximate cause of Mr. Williams being a paraplegic and never walking again.

The failure to provide proper safety equipment on implied contract is gross fraud by misleading the driver, Mr. Williams, that he had safe equipment to haul a trailer, and that Mr. Williams had relied on the company of Capps Trailer Sales to provide him with safe equipment to complete the job of hauling trailer for Mr. Huey Capps, and because of this unsafe trailer with no safety switch the driver in an emergency was unable to control the trailer on the road after being hit by a milk tanker, and after also having an overload of concrete blocks which was also a fraud because NO permit to haul an overload of concrete blocks and Mr. Capps knew or should have know that he was misleading the driver. The bottom line is that disputed facts should have been decided by a jury, and the wrong standard of review dismissing the case when there were "sets of facts" to show a claim is reversible error. See Argument.

REASONS FOR WRIT OF CERTIORARI

Questions I and II are discussed together since the bottom line is lack of due process in the trial court and the appellate court.

THE PLAINTIFF'S RIGHTS TO DUE PROCESS IN THE TRAIL COURT UNDER THE 5TH AND 14TH AMENDMENTS TO THE U.S. CONSTITUTION WERE VIOLATED BY THE LOWER TRIAL COURT WHO RULED INCORRECTLY AND MADE REVERSIBLE ERROR ON ALL DISPOSITIVE MOTIONS AND ALWAYS RULED FOR THE DEFENDANT, AND IN THE APPELLATE COURT, THE SUPREME COURT OF ALABAMA, WERE VIOLATED WHEN THE APPELLATE COURT RULED "AFFIRMED", INFRINGING ON THE CONSTITUTIONAL RIGHTS OF A CITIZEN OF THE UNITED STATES TO DUE PROCESS IN THE APPELLATE COURT.

The threshold issue is clearly concerned whether the Plaintiff had due process rights under the 5th and 14th Amendments to the U.S. Constitution to have his case properly heard in the trial court below and appellant court. Both of the issues listed are being discussed together since all relate to whether Plaintiff received the proper due process in any court.

See Jones v. Alabama State Docks, 443 So. 2d 902 at 903, (Ala. 1983), which states,

"Due process clause of State Constitution secures every citizen against arbitrary action of those in authority and places him or her within protection of law of the land. Const. § 13."

See Velger v. Cawley, 525 F. 2d 334 (2nd Cir. 1975) on due process.

See Standard Oil Co. v. Graves, Wash. 1919, 49 S. Ct. 320, 249 U.S. 389, 63 L. Ed. 662, which states,

"While the Supreme Court follows the decision of the highest state court as to the meaning of a state statute which asserted to violated the Federal constitution, the name given to the statute is not conclusive, and it must be judged by its necessary effect, and if that is to violate the Constitution of the United States the law must be declared void. Emphasis added.

See Horwitt v. Horwitt, D.C., Conn. 1950, 90 F. Supp. 529,

"United States Supreme Court may review directly the decision of the highest state courts on the constitutionality, under the Federal Constitution, of state statutes."

Because of the constitutional violations as stated above when no due process was shown to Mr. Williams, his civil rights under 42 U.S.C. § 1983 were violated when he is a paraplegic.

The Petitioner is asking this Honorable Court to take original jurisdiction of this instant case and review the incorrect decisions of the State of Alabama, Supreme Court of Alabama, ignoring their own law, Code of Alabama, § 6-2-3 on the tolling of the statutes of limitations for newly discovered fraud which was ignored in the lower court even when there were 2 affidavits showing that concrete blocks had to be removed from the wrecked cab before Mr. Williams who was made a paraplegic because of the fraud of the concrete blocks overloading his hauling of a trailer when he was hit by a milk tanker when there was no brake away switch and no permit to haul the

extra load. The Supreme Court of Alabama stated there was "re-evaluation" when in reality there was newly discovered fraud evidence which was not available in 1974. When a court fails to follow its own law, there should be an exception to any legal technicality to avoid review by an appellate court. Clearly, Mr. Williams due process rights under the 5th and 14th Amendments to the U.S. Constitution have been violated in all courts below and this Writ should be granted and the case decided on its merits.

The Petitioner incorporates all statements made in the Questions I and II into this discussion on the Reasons for Writ of Certiorari.

The facts and law presented in this Writ for Certiorari clearly show that the instant case is not a frivolous lawsuit for which the attorney should be sanctioned, especially since the U.S.Court of Appeals, 11th Circuit, ruled correctly the first time denying sanctions

which the special interest groups that had no interests in paying Mr. Williams what was due him are now trying to personally attack the lawyer who tried to help Mr. Williams by asking for reconsideration. At the time of writing this Writ of Certiorari there is no knowledge of any ruling on the Motions, one of which was untimely filed. Because it is necessary to file this Petition on time, and an attempt was made to check the file which was missing on November 29, 1993 in Atlanta at the U.S. Court of Appeals, 11th Circuit, the lawyer, Dr. Asam, has included the Question presented #2 in the discussion of Question presented #1.

The U.S. Court of Appeals, 11th Circuit, did not rule the instant case was frivolous, and the attorneys failed to file cross-appeals, and the attorneys failed to timely present any meritorious claims of an alleged frivolous lawsuit and therefore any reconsideration of granting any alleged sanctions should not be allowed in the instant case. Because attorneys have failed

to show the instant case was frivolous,and the U.S.Court of Appeals, 11th Circuit, did not rule that the instant case was frivolous, the Rule 11,FRCP does not apply, and this Honorable Court without such proof, cannot apply the facts found in Code of Alabama, §12-19-273.

III. THERE IS AN ELEVENTH AMENDMENT EXCEPTION THROUGH THE AMERICANS WITH DISABILITIES ACT SINCE THE RULING IN THE INSTANT CASE IN THE U.S. COURT OF APPELAS, 11TH CIRCUIT, WAS ON AUGUST 18, 1993, WITH REHEARING DENIED ON SEPTEMBER 22, 1993, dates after the implementation of the Americans with Disabilities act, July 26, 1992, 42 U.S.C. § 12111 n. was the effective date, and because the paraplegic condition of Mr. Williams is continuous, and the rulings were on August 18, 1993, and September 22, 1993, the Americans with Disabilities act exception should be allowed, and the instant case reversed and remanded after the Writ for Certiorari is granted and a merits brief allowed to be written.

The suit against the State of Alabama was challenging a procedural law, Code of Alabama, §6-2-3, and not for money from the State of Alabama, Supreme Court of Alabama , who ignored true facts below which were in the record with two affidavits showing newly discovered fraud which should have tolled statutes of lim_tations pursuant to §6-2-3 of Alabama Code.

Material factual issues concerning existence of fraud should be decided by a jury. See Great Destinations, Inc. v. Transportes Aereos Portugueses S.A.R.L. 460 F. Supp. 1160 (1978), which states,

"In action in which plaintiff alleged that it was fraudulently induced by defendant to undertake damages, summary judgment was precluded by existence of material factual issues concerning existence of fraud." (Emphasis added.)

The Writ of Certiorari should be granted and Merits brief allowed, and then the instant case should be reversed and remanded for a trial by a jury of all triable issues.

CONCLUSION

Based on the above, clearly Mr. Williams civil rights under 42 U.S.C § 1983, were violated when Mr. Williams received no due process in any court below; therefore, the Writ of Certiorari should be granted for reasons stated in this Writ above, and the Merits brief allowed to be written and the case reversed and remanded for a trial by a jury.

12/13/93
Dated

Respectively submitted,

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APPENDIX A

IN THE UNITED STATES DISTRICT COURT

FOR THE MIDDLE DISTRICT OF ALABAMA

NORTHERN DIVISION

JESSIE EDWARD WILLIAMS,

Plaintiff,

v. CA NO. 92-H-0064-N

STATE OF ALABAMA, CAPPS' TRAILER SALES, HUEY H. CAPPS AND RELIANCE INSURANCE COMPANY,

Defendants

ORDER

This matter is before the Court on the defendants' motions to dismiss. The State of Alabama filed its motion on March 2, 1992 and defendants Capps and Capps Trailer Sales filed their motion on March 18. For the reasons stated below, both of these motions are due to be granted and this action is due to be dismissed.

In 1973, the plaintiff was injured in an automobile wreck while driving a truck for his employer, Capps Trailer Sales. He apparently

settled his claims against the driver of the other vehicle in 1974. In 1990, he brought suit in state court against his employer. The Dallas County Circuit Court dismissed his claims because the statute of limitations had run. This decision was affirmed by the Alabama Supreme Court.

What the plaintiff now presents to this Court is a challenge to the Alabama Supreme Court's decision. The complaint appears to allege that the Alabama Supreme Court incorrectly applied § 6-2-3, Code of Alabama of 1975, in violation of the plaintiff's fifth and fourteenth amendment rights and in violation of the Americans With Disabilities Act of 1990. In the alternative, the plaintiff alleges that §6-2-3 is discriminatory in some way not made entirely clear by the complaint.

It is beyond doubt that the State of Alabama is entitled to Eleventh Amendment immunity when sued in federal court. accordingly, all claims against it must be dismissed.

As for the defendants Huey Capps and Capps

Trailer Sales, the plaintiff has failed to state a claim against them. Even assuming as the Court must, that the allegations containued in Williams complaint are true, he has pleaded no set of facts which could possibly entitle him to recover any sort of relief from these defendants. Williams is apparently aggrieved with the application of an Alabama law, but he has not alleged that these defendants are in any way responsible for that law or even that they have violated that law. [misapplication of the law in Code of Alabama, §6-2-3 because there was no re-evaluation as basis of newly discovered fraud which was concrete blocks had to be removed off of Mr. Williams made a paraplegic before he could be lifted from the wrecked truck cab that was hauling the trailer overloaded with concrete blocks that severed his spinal cord - see the two affidivits in record below] Accordingly, Capps and Capps Trailer Sales must be dismissed as defendants.

The plaintiff has also sued Reliance Insurance Company. Although Reliance was never properly

served, its attorney has notified the Court that he is authorized to accept service for Reliance in this matter. Reliance has now moved to dismiss for failure to state a claim. Again, there is no set of facts pled in the complaint which could possibly provide the basis for a claim against Reliance. The complaint does not mention Reliance or any other insurance company nor does it even hint at the nature of reliance's connection with the case. Thus, Reliance Insurance Company must also be dismissed as a defendant.

The plaintiff has also sued "Defendants 1-5," although he has not identified these defendants. In fact, although these defendants are listed in the style of the case, the complaint does not mention them nor does it describe the nature of their supposed actions. They must be dismissed from this suit because the plaintiff has failed to state a claim against them.

In accordance with this opinion, it is hereby ORDERED that the State of Alabama's motion to dismiss is GRANTED. It is hereby ORDERED that

defendants Capps and Capps Trailer Sales motion to dismiss is GRANTED. It is hereby ORDERED that defendant Reliance Insurance Company's motion to dismiss be GRANTED. This action is DISMISSED with prejudice. All parties are DISMISSED as party defendants.

DONE this 15th day of May, 1992.

s/Truman Hobbs

U.S. District Judge

APPENDIX B

IN THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

No. 92-6535

JESSIE EDWARD WILLIAMS,

Plaintiff-Appellant

v.

STATE OF ALABAMA, CAPPS TRAILER SALES ET AL.

Defendants-Appellees

Appeal from the United States District Court Middle District of Alabama (August 18, 1993)

PER CURIAM:

This personal injury action has proceeded through the Alabama courts, and the plaintiff subsequently has attempted to raise federal claims. The district court granted defendants' motions to dismiss. After review of the record, we AFFIRM.

1. BACKGROUND

In Match, 1973, in the course of his employment, plaintiff-appellant Jessie Edward Williams was invovled in a traffic accident that left him paraplegic. Williams settled his claims against

the driver of the other vehicle in 1974. Concerning his employer, Williams, alleged that he was required to drive a trailer overloaded with concrete blocks and that the braking system was defective. [This was the new evidence showing fraud which was ignored by all courts below]. He sought and recovered substantial damages for his personal injuries in the Wilcox County Court in 1974. The Jefferson County Circuit Court approved a workmen's compensation award in 1975 to Williams in another action. [The point is Mr. Williams did not receive all the money alleged to be for him].

Seventeen years after the cause of action arose, Williams filed a third complaint in Dallas County Circuit Court against various defendants, including his employer, defendant-appellee Capps Trailer Sales; its owner, defendant-appellee Huey H.Capps; defendant-appellee Reliance Insurance Company; the driver of the vehicle that injured him; and

the workmen's compensation carrier for Williams's employer. All the defendants filed a motion for dismissal, which was granted. The Alabama Supreme court affirmed and ruled generally that personal injury actions must be brought within two years from the occurrence of the injury pursuant to Alabama Code section 6-2-38(1). Williams v. Capps Trailer Sales, 589 So. 2d 159 (Ala. 1991). While acknowledging that Alabama Code section 6-2-3 allows two years from the discovery of fraud for the injured party to file an action, the Alabama Supreme Court determined that the statute was not applicable to Williams's case because he merely reevaluated facts [this is a false statement since the newly discovered evidence about the concrete blocks overload was ignored, and two affidavits were presented in the lower court from two men that helped Mr. Williams out of his truck cab hauling the trailer overloaded with concrete blocks

because the two men had to remove concrete blocks before removing Mr. Williams - these facts about the concrete blocks were not found in the record at Wilcox County Court, but was in the record in the original case in 1990 in Dallas County Court record] known seventeen years before, or the time of his previous litigation.

Williams filed the case from which this appeal arises on January 14, 1992. The causes of action are virtually identical to his prior litigation. Williams appears to alleged that the Alabama Supreme court erroneously rejected application of Alabama section 6-2-3 in violation of his Fifth and Fourteenth Amendment rights and his undescribed violation of the Americans with Disabilities Act of 1990. He also added the State of Alabama as a defendant. The district court dismissed the action, and his appeal ensued.

II DISCUSSION

"For a motion to dismiss to be granted, plaintiff's complaint, factually accepted as correct, must evidence that there is no set of facts entitling him to relief." Brown v. Crwford County, 960 F. 2d 1002, 1010 (11th Cir. 1992). "To the extent that the dismissal of a case is based on the District Court's conclusions of law, such conclusions are subject to plenary review as with any question of law." McDonald v.Hillsborough County School Bd. 821 F. 2d 1563, 1564, (11th Cir. 1987]. Accordingly, we must consider both the facts alleged as well as the district court's legal conclusions.

Williams federal action is differentiated from his state court action by the addition of the State of Alabama as a defendant an allegation of a violation of the Americans with Disabilities Act of 1990. Eleventh Amendment immunity extends to an unconsenting

state sued by citizens of that state in federal court. Hans v. Louisiana, 134 U.S. 1, 10 S. Ct. 504, 33 L. Ed.2d 842 (1890). Two exceptions have been recognized."First, Congress can abrogate eleventh amendment immunity without the state's consent when it acts pursuant to the enforcement provisions of section 5 of the fourteenth amendment. Atascadero State Hospital v. Scanlon, 473 U.S. 234, 238, 105 S. Ct. 3142, 3145, 87 L. Ed 2d 171 (1985). Second, a state may waive its immunity expressly through legislative enactment." Carr v. City of Florence, 916 F. 2d 1521, 1524 (11th Cir. 1990)(footnote omitted).

The second exception is not implicated in this case. Williams appears to have included a unspecified violation of the Americans With Disabilities Act because the statute precludes Eleventh Amendment immunity for states in federal court. 42 U.S.C. § 12202. The Americans with Disabilities Act, however, did not become effective until July 26, 1992. 42 U.S.C. § 12111 n. (Effective Date). The Alabama Supreme Court

decision, with which Williams disagrees and asks this court to revisit, was rendered on August 9, 1991. Because the Americans with Disabilities Act does not contain language requiring retroactive application, it cannot be construed to have retroactive effect. See Bowen v. Georgetown Univ. Hosp. 488 U.S. 204, 208, 109 S. Ct. 468, 471, 102 L. Ed. 2d 493 (1988); Wright v. Director, Federal Emergency, Management Agency, 913 F 2d 1568, 1572 (11th Cir. 1990). Accordingly, the Eleventh Amendment preclusion contained in the Americans with Disabilities Act is inapplicable to eliminate sovereign immunity for the State of Alabama. The suit against the State of Alabama properly was dismissed under the Eleventh Amendment.

William's federal action against defendants-appellees Capps Trailer Sales, Huey H. Capps and Reliance Insurance Company does not differ appreciably from his state court action. He argues that depositions and

additional pictures of the accident scene constitute newly discovered evidence. Because the depositions and pictures were generated during discovery in Williams's 1973 personal injury lawsuit and available to his counsel in that case, the Alabama Supreme Court concluded that the tolling provisions of Alabama Code section 6-2-3 did not apply. Williams, 589 So. 2d at 160. That court explained that "[t]he purpose of §6-2-3 is not to toll the statute of limitations pending a 're-evaluation' of known facts." Id. [see explanation in brackets pp. a-4 and continued p. a-5] Thus, the Alabama Supreme Court found that Williams's case was barred by the statute of limitations and affirmed its dismissal.

In his federal complaint, Williams claims that "the Honorable Supreme Court has not ruled correctly according to the Code of Alabama, 1975, §6-2-3, concerning the tolling of the Statutes of Limitations in Fraud cases that are newly discovered." R1-1-2. He then presents the

same evidence and reasoning to allow his case in federal court as was reviewed thoroughly [case was not reviewed thoroughly when two affidavits below was ignored concerning the two men that lifted concrete blocks out of the truck cab before lifting Mr. Williams out of the wrecked truck cab and such newly found evidence was not found in any case before concerning the plaintiff-appellant Williams] and decided adversely to him in the Alabama courts. The Rooker-Feldman doctrine prevents federal district courts from reviewing state court decisions, even if federal issues are "inextricably intertwined" with the judgment of the state court. Liedel v. Juvenile Court, 891 F. 2d 1542, 1545 (11th Cir. 1990) (quoting Wood v. Orange County, 715 F. 2d 1543, 1546 (11th Cir. 1983), cert. denied, 467 U.S. 1210, 104 S. Ct. 2398, 81L. Ed. 2d 355 (1984). "[F]ederal review of state court decisions is entrusted solely to the Supreme Court." Wood, 715 F. 2d at 1546.

This preclusion applies although a plaintiff failed to raise the federal claim in state court. Liedel, 891 F. 2d at 1545. Therefore, the addition of new defendants or the injection of federal claims cannot overcome this bar to lower federal court review of a state court decision with which the losing party is dissatisfied. See Reynolds v. Georgia, 640 F. 2d 702, 707 (5th Cir. Unit B Mar.) cert denied, 454 U.S. 865, 102 S, Ct. 326, 70 L. Ed. 2d 168 (1981).

Therefore, Williams's federal action against defendants Capps Trailer Sales, Huey H. Capps and Reliance Insurance Company is precluded by by the Rooker-Feldman doctrine. Similarly, his federal action against fictitious defendants 1-5 is barred, even if they had been named or identified in any way in the complaint or the nature of their supposed conduct described whatsoever. As the complaint is drafted, however, Williams has failed to state a claim against them. See Fed. R. Civ.

P. 12(b)(6). The district court properly dismissed this action as to all of these defendants.

III CONCLUSION

The district court dismissed this action for failure to state a cognizable claim in federal court. Because the State of Alabama is protected from suit by the Eleventh Amendment and a federal action regarding the remaining defendants is barred by the Rooker-Feldman doctrine, we AFFIRM. Accordingly, appellant's motion to strike state court from appellees' appendices carried with the case is MOOT. The request for sanctions by appellees Capps Trailer Sales, Huey H. Capps and Reliance Insurance Company is DENIED.

[NOTE: The entire file of this instant appeal case was missing from files of the U.S.Court of Appeals, 11th Circuit on Nov. 29, 1993, after Dr. Asam had driven to Atlanta, Georgia to see the file before filing this Writ.]

Before HATCHETT, COX AND BIRCH, Circuit Judges.

APPENDIX C

IN THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

NO. 92-6535

JESSIE EDWARD WILLIAMS,

Plaintiff-Appellant

v.

STATE OF ALABAMA, CAPPS TRAILER SALES ET AL.

Defendants-Appellees

September 22,1993

Rehearing denied. No Opinion.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the Petition for Writ of Certiorari was sent to Mr. Alston Keith, Keith and Keith, 711 Alabama Avenue, Selma, Alabama 36701, Mr. William P. Sawyer, Attorney At Law, 428 South Lawrence St., Montgomery, Alabama 36101, Mr. Henry C. Chappell, Attorney At Law, P.O. Box 270, Montgomery, Alabama 36195, and Deputy Attorney General, State of Alabama, Alabama State House, 11 South Union Montgomery, Alabama 36130 this 13 day of December 1993.

Julia Asam